IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8723 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAPIL VISHNUBHAI TRIVEDI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 8723 of 2002

MR SAURABH G AMIN for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/02/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has

challenged his detention order dated 20.6.2002. By the impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(1) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "dangerous person" and is required to be detained under the preventive detention, so that, he may not continue with such type of dangerous activities.

#. Along with the detention order, the detenu was also served with the grounds of detention. In the said grounds, there is a reference of two criminal cases, being CR No.268 of 2001 and CR No.19 of 2002 registered at Katargam Police Station on 4.11.2001 and DCB Police Station on 10.11.2001 respectively.

#. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that, the last case registered against the petitioner is on 10.11.2001, while the detention order is passed as late as on 20.6.2002. For that purpose, learned advocate has relied upon the decision of this Court in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and others, reported in 1997 (1) GLH 381 wherein the Court in para 21 observed as under.:

> "In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Praksh v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth

v. S.Ramamurthy reported in 1993 (2) Suppli, SCC 61."

#. Mr.Pancholi, learned AGP, however, submitted that the petitioner has been actually arrested by the police on 29.4.2002 and that is why there is a delay in passing the impugned order. He submitted that even the statements of witnesses were recorded on later point of time. However, it is required to be noted that, if really the activities of the petitioner-detenu are required to be prevented, there is no reason to wait for such a long time, i.e. upto 20.6.2002. Even if the petitioner-detenu is arrested on later point of time, there is no reason for not passing the detention order within a reasonable time from the date of so called last incident. In that view of the matter and in view of the judgment referred to above, the order of detention is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 20.6.2002 is quashed and set aside. The detenu Kapil Vishnubhai Trivedi is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)
(pathan)